GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 195/Lab./AIL/J/2012 , dated 9th November 2012)

NOTIFICATION

Whereas, the Award in I.D. No. 16 of 2010, dated 26-7-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Hindustan Unilever Private Limited, Puducherry and its workman Thiru Ilanchezhiyan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Thursday, the 26th day of July 2012

I.D. No. 16/2010

E. Elanchezhian,
No. 29, Mariamman Koil Street,
Keezhsathamangalam, Korkadu,
Puducherry-605 110 .. Petitioner

Versus

The Managing Director,
Hindustan Unilever Limited,
Detergent Factory, Puducherry .. Respondent

This industrial dispute coming on 26-6-2012 for final hearing before me in the presence of Thiru Durai Arumugam, appearing for the petitioner, Thiruvalargal L. Sathish, N. Krishnamurthy, T. Pravin and V. Veeraragavan, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 57/AIL/Lab./J/2010, dated 23-3-2010 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the dispute raised by Thiru Ilanchezhiyan against the management of M/s. Hindustan Unilever Limited, Detertent Factory, Puducherry over non-employment is justified or not?

(2) If justified, what relief , the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as Tank Farm Operator from 7-2-2000 in the respondent company with blemishless past records. The petitioner was given a charge sheet, dated 1-9-2005 which was fabricated and based on suspicion. On receiving the charge sheet, the petitioner has submitted his plea on 3-9-2005 denying the contents found in the charge sheet. Since the reply was not satisfactory, the enquiry was conducted by appointing one Soundararajan. But the enquiry was conducted against the principles of natural justice. The enquiry is vitiated because the Enquiry Officer was the H.R. Manager of the respondent company. The important witnesses were not examined in the enquiry and the petitioner was not given opportunity in the enquiry proceedings. The letters from Kathirvelu and the lorry cleaner Selvaraj were obtained by this respondent by coercion and force and they were forced to falsely implicate the petitioner in their letter. The complaint given by the respondent regarding the incident of theft was closed by the police on the grounds that such incident was never happened.

When he was terminated from his service on 18-12-2008, there were two conciliation proceedings pending which were raised by a union called Hindustan Unilever Employees' Union and therefore while terminating the petitioner, he ought to have been given one month salary and approval should have been obtained from the Labour Department for his termination. Hence, this industrial dispute is filed for his reinstatement with other benefits.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was employed in DFA Plant as a Tank Farm Operator from 7-2-2000 and his roles and responsibilities have been defined in his appointment order. His prime duty was to unload various oil that are received by the respondent factory in tanker lorries. He was well trained in the job. The Tank Farm Operators will open the top manhold of the tanker and check the oil. Once the oil is checked and found to be of good quality, then it is unloaded by the Tank Farm Operators.

The respondent received information through one Selvaraj, a lorry cleaner working with Globe Transports and who transported C.P.K.O. from Korukkupettai to this respondent's factory that on 26-3-2005 and 28-4-2005, the crude palm kernel oil which is transported from Chennai to Vadamangalam were stopped at Chengalpet and 1/3rd of the oil in those tankers were unloaded at one Perumal's premises and it was filled with equal quantity of water. Such adulterated oil was brought to this respondent's factory and they were unloaded by the petitioner and one Kadirvelu. The said Perumal had paid ₹ 10,000 to the driver and cleaner and ₹ 20,000 to the petitioner and Kadirvelu for each of those trips. A written letter to that effect was given by the said Selvaraj. The said Kadirvelu accepted his guilty and gave a written letter to that effect and resigned his job on 31-8-2005. Based on the letters given by the said Kadirvelu and Selvaraj, the charge sheet, dated 1-9-2005 was issued to the petitioner. The Enquiry Officer conducted the enquiry in utmost fairness and by adhering to the essential principles of natural justice, equity and fair play and on proving the charges against the petitioner, he was terminated from service. Hence, they pray for dismissal of the petition.

4. On the side of the petitioner, PW.1 was examined and Exs.P1 to Ex.P13 were marked. On the side of the respondent, RW.1 was examined and Exs.R1 to Exs.R15 were marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

The main contention of the petitioner is that he was working as Tank Farm Operator from 7-2-2000 in the respondent company with blemishless past records and he was given a charge sheet, dated 1-9-2005 which was fabricated and based on suspicion and conducted the enquiry and based on the enquiry report, he was terminated from service.

7. In order to prove his contention, the petitioner examined himself as PW.1 and marked Exs.P1 to Ex.P13.

8. *Per contra*, the contention of the respondent is that on 26-3-2005 and 28-4-2005 the crude palm kernel oil which transported from Chennai to Vadamangalam were stopped at Chengalpet and 1/3rd of the oil in those tankers were unloaded at one Perumal's premises and it was filled with equal quantity of water and such adulterated oil was brought to this respondent's factory and they were unloaded by the petitioner and one Kadirvelu and the said Perumal had paid ₹ 10,000 to the driver and cleaner and ₹ 20,000 to the petitioner and Kadirvelu for each of those trips and a written letter to that effect was given by the said Selvaraj and the said Kadirvelu accepted his guilty and gave a written letter to that effect and resigned his job on 31-8-2005 and based on the letters given by the said Kadirvelu and Selvaraj, the charge sheet, dated 1-9-2005 was issued to the petitioner and the Enquiry Officer conducted the enquiry in utmost fairness and by adhering to the essential principles of natural justice, equiry and fair play and on proving the charges against the petitioner, he was terminated from his service. In order to prove his defence, the H.R. Executive of the respondent company was examined as RW.1, who has deposed about the said facts.

9. According to the respondent, the said information was received by them through one Selvaraj, who was a lorry cleaner working with Globe Transports. On the side of the respondent, the letter submitted by the said Selvaraj to the respondent company was marked as Ex.R2. Ex.R2 confirmed the said version.

10. It is the further case of the respondent that the said adulterated oil was unloaded by one Kadirvelu along with the petitioner. On the side of the respondent, the letter submitted by the said Kadirvelu was marked as Ex.R1. In Ex.R1, the said Kadirvelu has admitted that he along with the petitioner unloaded the adulterated oil and hence it is clearly proved that on 26-3-2005 and 28-4-2005 the crude palm kernel oil which transported from Chennai to Vadamangalam were stopped at Chengalpet and 1/3rd of the oil in those tankers were unloaded at one Perumal's premises and it was filled with equal quantity of water and such adulterated oil was unloaded by the petitioner and the said Kadirvelu in the respondent factory.

11. The contention of the petitioner is that the letters from Kathirvelu and Selvaraj were obtained by this respondent by coercion and force. But on the side of the respondent, neither the said Kathirvelu nor the said Selvaraj was examined to prove that Ex.R1 and Ex.R2 were obtained from them by coercion. Further in the domestic enquiry, the petitioner has not taken any steps to examine these witnesses on his side. In his cross- examination also, the petitioner has admitted that he has not given any letter requesting the management to examine these witnesses on his side. It is the duty of the petitioner to establish that to what extent and how far, he has been prejudiced by the domestic enquiry conducted by the present management. Hence, the contention of the petitioner that Ex.R1 and Ex.R2 were obtained from the said witnesses by coercion and force cannot be accepted.

12. The petitioner has further submitted that the domestic enquiry was conducted only as a mere formality for the sake of satisfying the legal requirements and the enquiry was conducted against the principles of

natural justice. He further submitted that no opportunity was given to the petitioner in the enquiry to prove his innocence and the important witnesses were not examined and the relevant documents were not marked by the Enquiry Officer.

13. The learned counsel for the respondent has submitted that the enquiry report was based on the appreciation of the entire materials placed on record by applying sound principles of law and reasoning and sufficient opportunity was given to the petitioner to defend his case. In order to support his claim, he relied upon the following decisions:-

CDJ 2007 SC 1306 (L & T Komatsu Limited, Vs. N. Udayakumar):

Section 11A - Interference in quantum of punishment -Habitual absenteeism - Termination from service - Whether habitual absenteeism means the gross violation of discipline - The Labour Court set aside the order of dismissal and the management was directed to reinstate the workman with continuity of service but without back wages - The learned Single Judge modified the award and deprived the workman from continuity of service - The Division Bench directed reinstatement without back wages but with continuity of service - Hence, this appeal - The Labour Court and the High Court were not justified in directing the reinstatement by interference with the order of termination. The orders are accordingly set aside. The order of termination as passed by the concerned authority stands restored. The appeal is allowed with no orders as to costs.

CDJ 2007 MHC 3824 N.P. Jayakumar and Another Vs. The Chief Engineer (Distribution), Chennai Region (TNEB):

The charges framed are serious, which include fabrication of records and the charges contain various minute details relating to the shortages which occurred during the time when the petitioner was working as Store Custodian Grade-I in Sub-stores, Korattur. A reference to the recovery order passed by the second respondent on 24-2-1999 shows that in fact a detailed enquiry was conducted with sufficient opportunity being given to the petitioner and the shortage of materials was found to be proved against the petitioner, the amount of which was quantified to the extent of ₹ 37,375.40. Even a second show cause notice was given to the petitioner, to which the petitioner has also given his explanation. It is also seen that the first respondent being the appellate authority has in fact considered each and every one of the charges individually and found on merits that the order of the original authority in imposing the punishment does not require any interference. Here is a case where two authorities have on merits and in substance found that the charges against the petitioner are proved and in such circumstances, I do not see any reason to interfere with the impugned order.

It is well settled that in cases of domestic enquiry, it is not the strict proof of evidence or the principles of criminal law that is applicable, but the preponderance of evidence is sufficient, as it is held in B.C. Chaturvedi *Vs.* Union of India [1997(4) LLN 65].

CDJ 2006 SC 430: The General Secretary, South lndian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Limited and Others:-

"When enquiry was conducted fairly and properly in the absence of any of the allegations of victimisation or *mala fides* or unfair labour practice, Labour Court has no power to interfere with the punishment imposed by the management since section 11A is not applicable, Labour Court has no power to reappraise the evidence to find out whether the findings of the Enquiry Officer are correct or not or whether the punishment imposed is adequate or not. Of course, Labour Court can interfere with the findings if the findings are perverse. But, here there is a clear finding that the findings are not perverse and principles of natural justice were complied with while conducting enquiry. Above being the position, the impugned judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal is *sans merit* and is dismissed."

CDJ 2007 SC 1047: U.B. Gadhe and Others Vs. G.M. Gujarat Ambuja Cement (P) Limited.

"Power and discretion conferred under the section needless to say have to be exercised judicially and judiciously. The court exercising such power and finding the misconduct to have been proved has to first advert to the question of necessity or desirability to interfere with the punishment imposed and if the employer does not justify the same on the circumstances, thereafter to consider the relief that can be granted. There must be compelling reason to vary the punishment and it should not be done in a casual manner."

14. On the side of the respondent, the copy of the enquiry proceedings was marked as Ex.R3. On perusal of Ex.R3, it is seen that the enquiry was commenced on 24-11-2005 and during the enquiry, he was allowed to keep one of his co-workers P. Achuthan to assist him in the enquiry and on the side of the respondent management, three witnesses were examined and the petitioner was given opportunity to cross-examine them and all of them were cross-examined by the petitioner.

A perusal of Ex.R3 also reveals that the petitioner was asked to examine any witness on his side, but he did not examine any witness and the petitioner submitted his written statement on 5-8-2005, which was marked as Ex.W6. Hence, the enquiry was conducted in a free and fair manner giving full opportunity to the petitioner to defend himself. Further the entire proceedings were conducted in Tamil, which is the language known to the petitioner. The records would further show that the second show cause notice Ex.R12 was given to the petitioner, enclosing the domestic enquiry report, giving him full opportunity to submit his explanation on the findings of the Enquiry Officer and finally the respondent management has dismissed the petitioner from the service. Under the above circumstances, I feel that sufficient opportunity was given to the petitioner in the enquiry proceedings and consequently, I find that the domestic enquiry was conducted in accordance with the principles and natural justice.

15. The petitioner has submitted that when he was terminated from his service on 18-12-2008, there was two conciliation proceedings pending which were raised by a union called Hindustan Unilever Employees' Union and therefore while terminating him, he ought to have been given one month salary and approval should have been obtained from the Labour Department for his termination. The following decisions were relied on the side of the petitioner:

Appeal (Civil) 87-88 of 1986:

The respondent No.1 was employed as Clerk-*cum*-Cashier with the appellant. He was dismissed from service. As certain proceedings were pending before the Industrial Tribunal, Jaipur, an application seeking approval of the Tribunal for the said dismissal was submitted by the appellant before the Tribunal under section 33(2) (b). The said application was contested on various grounds by the respondent including that the appellant-Bank had failed to comply with the provisions of section 33(2)(b) as salary for one month was not paid. The Tribunal, on facts, found that the appellant failed to comply with the provisions of section 33(2)(b) and in that view dismissed the application.

W.P. No. 244 of 2006 (Madras High Court) :

"Thus, applying the two decisions cited by the learned counsel for the second respondent/workman to the facts of this case and having regard to the factual finding given by the first respondent, namely less payment of one month wages to the second respondent, I am of the view that the findings given by the first respondent refusing to give approval is legally valid as the conditions stipulated in section 33(2)(b) are not fulfilled and no case is made out to interfere with the said findings."

16. The following decisions were relied on the side of the respondent:

1992-I-L.L.J.837 Madras High Court:

"In Jyanendra Mani Tripathi *Versus* Hindustan Aeronatutics Limited and Others, reported in 1976 Lab. 1C 234, the Allahabad High Court held that all those workmen on whose behalf dispute had been raised or who would be bound by the award made in pending dispute before the Industrial Tribunal are to be treated as workmen concerned in that dispute. It was further held that in order to determine this question the fact whether such workmen have any direct or immediate concern with the disputes or that they would be in any manner be directly affected by the award made in that dispute would not be conclusive, a protected workman would also be concerned in a dispute in case the dispute has been raised or is being conducted by a union of which he happens to be an office-bearer in which capacity he has been declared to be a protected workman.

In the instant case, even assuming that the first petitioner was a member of the union which had sponsored the dispute, the first petitioner was not bound by the Award that was passed; nor was he directly connected with the dispute already pending before the Labour Court. In view of the aforesaid reasoning that the first petitioner cannot be construed as the workman concerned and if the first petitioner happened to be the workman not concerned with the dispute for the reasons stated above, there was no need for the employer to seek permission as contemplated under section 33(2)(b) of the Act. Simply because the first petitioner happened to be the member of the union, which sponsored the dispute, the petitioner cannot claim that he is a workman concerned with reference to the dispute which was then pending unless there is some other common feature in the disputes which were pending and the claim of the petitioner."

16. But the petitioner has not produced any evidence to show that he was or is the member of HUL Employees' Union. Though the petitioner has produced the membership receipt under Ex.P6 to prove that he is the member in the Hindustan Uniliver Employees' Union, any one of the office bearers of the union has not been examined as a witness to prove the same. Hence, Ex.P6 cannot be taken into consideration. Further the present dispute is only an individual dispute under section 2A of Industrial Disputes Act unsupported and unsponsored by any union, whereas, two conciliation proceedings referred to by the petitioner were the industrial disputes raised by the unions under section 2(k) of Industrial Disputes Act. The disputes raised in the previous conciliation proceedings by

HUL Employees' Union had absolute no nexus or connection with the petitioner as rightly pointed out by the learned counsel for the respondent.

17. It is pertinent to refer the following decisions, which are relevant to this case:

2003(2) L.L.N. 642:

V. Kasi *Versus* Pandian Roadways Corporation Limited and Others: "Industrial Disputes Act, 1947, section 11A - Scope - Appellant, a conductor in respondent roadways was dismissed from service after enquiry for not issuing tickets to three adults and a child though fares were collected for them - Dispute referred - Labour Court held that no misconduct had been alleged against the conductor in the immediately preceding seven years and hence directed his reinstatement in service but without back wages -On a writ petition by employer-Corporation, learned Single Judge set aside the award of Labour Court-Hence, the instant appeal by the aggrieved conductor- Held, it is not the amount which has been withheld that is material but it is the conduct which is dishonest that is required to be dealt with- Order of learned Single Judge quashing the award of Labour Court affirmed."

2006(4) L.L.N. 626:

Depot Manager A.P. State Road Transport Corporation Versus Raghuda Siva Sankar Prasad :

"Interfering therefore with the quantum of punishment of the respondent herein, is not called for. The respondent has no legal right to continue in the Corporation. Loss of confidence occupies the primary factor and not the amount of money and sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment.

2001 III CLR 592:

Kanhaiyalal Agarwal and Others Versus Factory Manager, Gwalior Sugar Co. Limited.

"Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the Labour Court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.

Misappropriation of fund or material is a serious misconduct. The workman, who is entrusted with the trust should do his work with higher degree of honesty. Loss of confidence and faith in the employment for which there is no place of sympathy or generosity. In this case, the petitioner, who was entrusted a job for which he should have done with higher caliber of sincerity, but he failed to do, on the other hand, he acted dishonestly and made loss to the management which act was proved in the domestic enquiry. In the above circumstances, the contention of the petitioner in this regard cannot be taken into consideration. Hence, for the above reasons, the industrial dispute is liable to be dismissed.

18. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 26th day of July, 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

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List of witnesses examined for the petitioner:

PW.1—18-8-2011 and 8-3-2012—Ilanchezhian

List of witnesses examined for the respondent:

RW.1—5-4-2012—Arokia Berdila Anand

List of exhibits marked for the petitioner:

Ex.P1 — Charge sheet issued to the petitioner, dated 1-9-2005.

Ex.P2 — Reply given by the petitioner to the respondent, dated 3-9-2005.

Ex.P3 — Copy of the enquiry proceedings, dated 1-8-2006.

Ex.P4 — Enquiry report, dated 1-11-2006

Ex.P5 — Complaint given to the police station by respondent, dated 3-9-2005.

Ex.P6 — Receipt issued by the union to the petitioner, dated 3-1-2008.

Ex.P7 — Notice issued for hunger strike, dated 1-5-2008.

Ex.P8 — Letter sent by Conciliation Officer for enquiry, dated 24-7-2008.

Ex.P9 — Reply given by the respondent to Conciliation Officer, dated 8-9-2008.

Ex.P10 — Reply given by the respondent, dated 5-12-2008.

Ex.P11 — Copy of the notice of enquiry sent to the respondent, dated 10-12-2008.

Ex.P12 — Copy of punishment order, dated 18-12-2008

Ex.P13 — Additional counter by respondent, dated 2-3-2009.

List of exhibits marked for the respondent:

Ex.R1 — Letter submitted by Kadirvel to the respondent, dated 31-8-2005.

Ex.R2 — Letter submitted by Selvaraj to the respondent, dated 31-8-2005.

Ex.R3 — Copy of enquiry proceedings

Ex.R4 — Letter of authorisation

Ex.R5 — Copy of charge sheet issued to the petitioner, dated 1-9-2005.

Ex.R6 — Copy of complaint filed by respondent, dated 3-9-2005.

Ex.R7 — Copy of reply given by petitioner to the charge sheet, dated 3-9-2005.

Ex.R8 — Copy of notice of enquiry given by the petitioner to the Enquiry Officer, dated 15-11-2005.

Ex.R9 — Copy of letter given by the petitioner to Enquiry Officer, dated 24-11-2005.

Ex.R10 — Copy of letter given by one Achuthan to Enquiry Officer, dated 24-11-2005.

Ex.R11 — Copy of enquiry report by Enquiry Officer, dated 1-11-2006.

Ex.R12 — Copy of second show cause notice, dated 17-11-2008.

Ex.R13 — Copy of reply given by the petitioner, dated 10-12-2008.

Ex.R14 — Copy of letter given by Kadirvel to respondent, dated 11-12-2008.

Ex.R15 — Copy of punishment order issued to the petitioner, dated 18-12-2008.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 196/Lab./AIL/J/2012, dated 14th November 2012)*

NOTIFICATION

Whereas, the Award in I.D. No. 16 of 2008, dated 19-7-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Chemfab Alkalis Limited, Puducherry and its workman Thiru E. Sivakumar over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Thursday, the 19th day of July 2012

I.D. No. 16/2008

E. Sivakumar . . Petitioner

Versus

The Managing Director,
Chemfab Alkalies Limited,
Kalapet, Puducherry. . . Respondent

This industrial dispute coming on 10-7-2012 for final hearing before me in the presence of Thiru B. Mohandass, Advocate for the petitioner, Thiru G. Krishnan, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 94/AIL/Lab./J/2008, dated 6-6-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the dispute raised by Thiru E. Sivakumar against the management of M/s. Chemfab Alkalis Limited, Puducherry over his non-employment is justified or not?

(2) If not, to what relief, Thiru E. Sivakumar, is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner, in his claim statement, has averred as follows:

Originally, the petitioner joined as Office Attender in the respondent company and in the year 1990, he was appointed as Driver and he discharged his duties in a very sincere and honest manner and without any black mark.

On 28-5-2005, the General Manager of the respondent company by name Michael Raj informed the petitioner and the other drivers that they had decided to out source the work of the drivers of the company to a contractor, who would be providing vehicles and drivers with effect from 1st June 2005 and hence all the drivers should submit their resignation letters on or before 31st May 2005 and accept the compensation settlement decided by the respondent. But the said proposal of the respondent company was not accepted by the petitioner and the other drivers, since many of them had many financial commitments like discharge of housing loan, personal loan, educational expenses for their children etc. Hence, they have no other alternative than to start a trade union and accordingly, they submitted the requisite form for registration of the trade union under the name and style "Chemfab Alkalis Employees' Union" to the Labour Officer, Puducherry and intimated the same to the respondent company through FAX. But the respondent management did not care for this action of the petitioner and other drivers but proceeded with its decision to entrust the task of drivers to the contractor. As such on 1-6-2005, the petitioner and the other drivers were stopped from doing their work and the work of drivers was given to an outside contractor K.B.S. Transports. The petitioner and other drivers went on pleading with the respondent to give them back the work as earlier. But the respondent was not prepared to reconsider its decision in the matter of entrusting the work of drivers to contractor.

On 4-6-2005, when they reported for work at 8.00 a.m. they were not allowed to go inside the company and about 9.00 a.m. the petitioner and other drivers were called inside and the Personnel Manager once again threatened them stating that it was last chance for them to get the compensation indicated by the respondent. As the petitioner refused to accept the same, the management planned to punish the drivers by transferring them to distant places like Chennai, Villivakkam etc. The transfer order in the form of punishment was nothing but act of victimisation and hence the petitioner refused to receive the said transfer order. The act of the management of transferring the drivers had a demoralising effect on the petitioner and the other drivers. They could not withstand the pressure given by the respondent to accept the *lump sum* offer for settlement of accounts or to suffer the injurious transfer to far away places. Finally unable to withstand the rigours of the managerial pressure, the petitioner and other drivers had to yield to the tunes set by the respondent and accordingly, the respondent succeeded in getting resignation letter from the petitioner by way of coercion and undue influence done through the managerial persons. Even then the respondent was not prepared to pay the *lump sum* amount as offered by the respondent, on account of fact that the petitioner and other drivers started the trade union. Under such circumstances, the termination of services of the petitioner by adopting unfair means is arbitrary, illegal and void and not binding on the petitioner. Hence this industrial dispute is filed to reinstatement the petitioner into service with back wages and continuity of service apart from claiming a sum of ₹ 2 lakhs towards damages.

3. In the counter statement, the respondent has stated as follows:

It is true that the petitioner was working in the respondent company as driver from 1-6-1994 to 8-6-2005. The respondent company intended to transfer the drivers for better utilisation of their services and on administrative reasons and exigencies of work. Having come to know of the transfer which is an incident of service, the drivers, who have worked at one station throughout their service career, made a representation to the then General Manager-HRD that they were totally fed up with the monotonous work which they were doing in the factory for a quite a long time and their dream was to own a vehicle and use it for commercial purpose which would fetch them more income and they could also concentrate on other works independently and further represented that their dreams would come true only with help of the management by paying them a *lump sum* as *ex gratia* apart from terminal benefits and if the management agree for such arrangement, though would even submit their resignation.

The management keeping in view of their long association with the management, considered the representation as *bona fide* and gave clearance to Michael Raj to negotiate with the drivers to arrive at a reasonable *ex gratia* payment without laying any precondition and accordingly, he proceeded with the negotiation. The management permitted the drivers to negotiate and finally the petitioner and other drivers have agreed for the *lump sum ex gratia* payment negotiated by the management taking into consideration of their respective period of service. In this background, the petitioner tendered his resignation voluntarily *vide* letter, dated 8-6-2005 and the resignation was accepted by the management and the petitioner has also received his legal dues and the *ex gratia* of ₹ 52,656 *vide* receipt of the same date and the management has also issued a Service Certificate to him. On account of his resignation, he has also applied for Gratuity in Form–1 and received the gratuity amount. Subsequently, he has also settled his provident fund account. The petitioner having tendered resignation voluntarily and after having accepted terminal benefits and *ex gratia* payment without any protest and after having settled his provident fund account cannot now turn round and allege that the resignation was obtained by coercion and undue influence. Hence, they pray for dismissal of the petition.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P10 were market. On the side of the respondent, RW.1 to RW. 3 were examined and Ex.R1 to Ex.R15 were marked.

5. *The point for determination is :*

Whether the industrial dispute can be allowed?

6. *On the point :*

The main contention of the petitioner is that orginally he joined as driver in the year 1980 and on 28-5-2005 the General Manager-HRD of the respondent company informed him that the respondent company had decided to out source the work of the drivers of the company to a contractor with effect from 1st June 2005 and hence he should submit his resignation letters on or before 31st May 2005 and since he refused to give the resignation letter, he was stopped from doing work from 1-6-2005 and once again the said Personnel Manager threatened him to submit his resignation letter and since he did not accept the same, the management planned to punish him by transferring him to distant places like Chennai, Villivakkam etc. and finally unable to withstand the rigours of the managerial pressure, he submitted his resignation letter to them. but the respondent was not prepared to pay the *lump sum* amount as originally offered by them.

7. In order to prove his claim, the petitioner examined himself as PW.1, who deposed about the said facts and marked Ex.P1 to Ex.P10. Ex.P1 is the resignation letter submitted by the petitioner to the respondent. Ex.P2 is the letter submitted by the petitioner to the respondent regarding settlement of accounts. Ex.P3 is the representation submitted by the petitioner to the Labour Officer. Ex.P4 is the reply submitted by the respondent to the Labour Officer. Ex.P5 is the Failure Report, dated 25-4-2008. Ex.P6 is the reply, dated 11-12-2006 submitted by the respondent to the Labour Officer. Ex.P7 is the representation, dated 10-6-2006 sent by Alwin Mariasusai to the respondent. Ex.P8 is the pamphlet showing the inaugural function of the trade union. Ex.P9 is the pay slip of the petitioner for the month of February 2005. Ex.P10 is the service certificate issued by the respondent to the petitioner. The learned counsel for the petitioner relied upon the following decisions to support his claim:

CDJ 2000 SC 199:

"The appellant was a casual labour who had attained the temporary status after having put in ten years of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meager amount of ₹ 6,350 was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental rights under the constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of fundamental rights available under the constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained."

CDJ 2003 SC 820:

"Medical Ethics - Hospital Service Rules - Rule 10(1) -Negligence-Appellant anaesthetist left without informing when requested to give anaesthesis to one patient admitted in emergency-No explanation submitted by her - Placed under suspension - Appellant replied to Secretary to Hospital that she was sick and very tired and if it is not acceptable she has no option left but to render her resignation with immediate effect-Resignation accepted-High Court declined to interfere dismissed writ petition-Appeal -Whether the letter, dated 9-1-1999 could be construed to mean or amounted to a letter of resignation or

merely an expression of her intention to resign, if her claims in respect of the alleged lapse are not viewed favourably - Held the letter cannot be construed to convey and spontaneous intention to give up or relinquish her office accompanied by any act of relinquishment. To constitute a 'resignation' it must be unconditional and with an intention to operate as such. At best, as observed by this court in the decision in P.K. Ramachandra Iyer (*supra*) it may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that she was being harassed unnecessarily but not, at any rate, amounting to a resignation, actual and simple - Order of High Court set aside-Appeals allowed with liberty to Respondent Hospital to pursue the disciplinary proceedings initiated against her in accordance with law.

8. *Per contra*, the contention of the respondent is that the respondent company intended to transfer the drivers including the petitioner, for better utilisation of their services and on administrative reasons and exigencies of work and having come to know of the transfer which is an incident of service, the petitioner along with other drivers, who have worked at one station throughout their service career, made a representation to the then General Manager-HRD that they were totally fed up with the monotonous work which they were doing in the factory for quite a long time and their dream was to own a vehicle and use it for commercial purpose which would fetch them more income and the management keeping in view of their long association with the management, considered the representation as *bona fide* and gave clearance to Michael Raj to negotiate with the drivers to arrive at a reasonable *ex gratia* payment without laying any precondition and accordingly he proceeded with the negotiation and after negotiation, the petitioner and other drivers have agreed for the *lump sum ex gratia* payment negotiated by the management taking into consideration of their respective period of service and the petitioner tendered his resignation voluntarily *vide* letter, dated 8-6-2005 and the resignation was accepted by the management and the petitioner has also received his legal dues and the *ex gratia* of ₹ 52,656 *vide* receipt of the same date and the management has also issued a service certificate to him and on account of his resignation, he has also applied for gratuity in Form–1 and received the gratuity amount and subsequently, he has also settled for gratuity in Form–1 and received the gratuity amount and subsequently, he has also settled his provident fund account and the petitioner having tendered resignation voluntarily and after having accepted terminal benefits and *ex gratia* payment without any protest and after having settled his provident fund account cannot now turn round and allege that the resignation was obtained by coercion and undue influence.

9. In order to prove his defence, the General Manager-HR of the respondent company was examined as RW.1. RW.1 in his evidence has deposed about the said facts and marked Ex.R1 to Ex.R15.

10. Heard both sides. Perused the case records. It is admitted by both parties that the petitioner was working as driver from 1-6-1994 to 8-6-2005 in the respondent company. It is also admitted by both parties that the petitioner has tendered his resignation to the respondent company. But the learned counsel for the petitioner has submitted that relieving the petitioner from service was due to coercion and he was threatened, forced in doing so and it was contrary to law. In the proof affidavit, the petitioner as PW.1 has stated that on 4-6-2005 when he reported for work at 8.00 a.m. he was not allowed to go inside the company and at about 9.00 a.m. he and other drivers were called inside and R. Sundararajan, Personnel Manager threatened them stating that it was the last chance for them to get the compensation indicated by the respondent and since he refused to accept the same, the management planned to punish them by transferring them to distance places like Chennai and he was transferred to Head Office, Vandalur, Chennai and as per the instruction of the said Sundararajan, he met him on 8-6-2005 by 2.00 p.m. who advised him to accept a sum of ₹ 5,00,000 offered by the respondent company and submit resignation letter at once and left with no other alternative, he decided to submit a resignation letter and then the said R. Sundararajan dictated the resignation letter, which was accepted by the respondent management. PW.1 further deposed that one Raghuraman asked him to sign many stamped/ unstamped blank papers and when he refused to do so, the said Raghuraman told him that unless the union board is removed, the compensation amount promised will not be given and then, he was given a cheque for ₹ 52,000 towards full and final settlement and as the resignation letter submitted by him was not voluntary one but obtained by the respondent under coercion and undue influence, it was not legally valid and binding on him.

11. In order to prove that the resignation letter was obtained by coercion, the petitioner has examined one Sundararajan as PW.2. PW2 in his evidence has deposed that he knows the petitioner and after getting resignation letter from the petitioner, he was terminated by the respondent company and as directed by his superior officer by name Michael Raj, the resignation letters were obtained from the petitioner and other drivers, since they were prepared to start a trade union. PW.2 further deposed that the petitioner himself wrote the resignation letter, as dictated by the respondent company. PW.2 further deposed that since the petitioner has not compromised with the management of the respondent and participated in starting the trade union,

he has forced to give the resignation letter. During the cross examination, PW.2 has admitted that on 31-3-2010 he was forced to resign the job from the respondent company and the respondent company has not given retirement benefit amount as promised by them.

12. The learned counsel for the respondent has submitted that the petitioner was not the workman within the meaning of 2(s) of Industrial Disputes Act and having given a voluntarily resignation, no dispute can be raised under section 2-A of the Industrial Disputes Act and the said provision is available only in the case of termination by the management and not in case of voluntary resignation by the petitioner. The learned counsel for the respondent further submitted that when the petitioner has voluntarily tendered his resignation and accepted the same by the management and all the benefits arising out of such resignation has been paid by the management and received by the petitioner, he cannot be treated as a 'workman' coming under section 2(s) of Industrial Disputes Act. In order to support his claim, he relied upon the following decisions:

(1999) II. L.L.J. 851 Ker :

"The appellant, having voluntarily tendered is resignation pursuant to a scheme for voluntary retirement, the resignation having been accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the appellant, he cannot be treated as a 'workman' coming under section 2(s) of Industrial Disputes Act. As already noticed, the definition only includes persons who are presently employed, or who have been dismissed, discharged or retrenched from the service of the employer".

(2001) II. L.L.J. 52 Ker :

"The absence of the terms 'resignation' and retirement in the aforesaid definition, according to me, is very conspicuous. When a person claims the status of a 'workman' under the deeming provisions, he has to establish that he comes within the four corners of the definition provided therefor under the statute."

Writ Petition No. 1488 of 2001 :

"The resignation by the petitioner brings about complete cessation of master and servant relationship between the third respondent and the petitioner. Hence, the petitioner cannot at all be termed as "workman" within the meaning of section 2(s) of the Act".

2011 L.L.R. 486 :

"In view of the above finding that the workmen are not workmen within the meaning of 2(2) of the Industrial Disputes Act and the case of the workmen that it was a fraud resignation was not believed, they are not eligible to move the Labour Court under section 2-A of the Industrial Disputes Act."

AIR 1990 SC 1808 :

"The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation, it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (I) of section 2(s) of State Act."

2008 L.L.R. 86 :

"Resignation by an employee - Withdrawal of - After valid acceptance not permissible - Petitioner tendered her resignation on 20-3-2006 to be effective from 1-4-2006 - Her account was settled and a cheque for ₹ 7,05,092 was given in full and final - in the last week of June 2006, the company introduced a severance package for employees who will be resigning - Petitioner sent a letter, dated 18-8-2006 stating that she has tendered the resignation under threat and coercion -Is devoid of justification - Resignation was voluntary and not under coercion."

13. On the side of the respondent, the resignation letter given by the petitioner was marked as Ex.R1. In Ex.R1, the petitioner has stated that on his own request, he tendered his resignation and hence he requested the respondent management to give the gratuity, *ex gratia* provident fund and other benefits. Based on Ex.R1, the petitioner was relieved from service by the respondent management. Ex.R1 has not been challenged by the petitioner. In fact, the petitioner himself has admitted in his cross-examination that he only wrote Ex.R1 and gave it to the respondent management. The relevant portion of his evidence runs as follows:-

"எக்சிபிட் பி 1 ராஜினாமா கடிதம் எனது கைப்பட எழுதி தரப்பட்டது என்றால் சரிதான். அந்த ராஜினாமா கடிதத்தை ஏற்றுக்கொண்டு பணியிலிருந்து விடுவித்துள்ளது."

Ex.R2 is the letter, dated 4-6-2005 sent by the respondent management to the petitioner. A perusal of Ex.R2 reveals that the respondent management has accepted the resignation tendered by the petitioner. Ex.R3 is the receipt issued by the petitioner in favour of the respondent company, which would prove that the petitioner has received a sum of ₹ 69,971 towards full and final settlement by way of two cheques on 14-6-2005. Ex.R6 is the application for gratuity, dated 8-6-2005 which has been given by the petitioner to the respondent company. The said documents clearly prove that based upon the resignation letter given by the

petitioner, he was relieved from service by the respondent company and subsequently he received a sum of ₹ 69,971 towards full and final settlement.

14. The learned counsel for the petitioner has submitted that the resignation letter has been obtained by the respondent company from the petitioner by force and coercion and PW.2 has clearly spoken about the said fact and hence the termination of the services of the petitioner by adopting unfair means is arbitrary, illegal and void and not binding on the petitioner.

15. It is true that PW.2, who is an ex-employee of the respondent company, has stated that the resignation letter has been obtained from the petitioner by force as directed by his superior officer. According to PW.2, he along with one Rajaraman went to the house of Lourdusamy, Panneerselvam and Sivakumar for compromise to get the resignation letter from them. The said Rajaraman was examined on the side of the respondent as RW.3. RW.3 in his evidence has deposed that he was working as Assistant Manager in the respondent company from 1997 and he did not involve in the labour matters and with regard to the resignation of drivers, he did not meet any person and get the letter from them. This part of evidence of RW.3 is contrary to the statement of PW.2. Further one Raguraman, General Manager of the respondent company was examined as RW.2. RW.2 in his evidence has deposed that the petitioner and the other drivers have voluntarily tendered their resignation and they were not forced to get the same in any manner. RW.2 in his evidence has further deposed that one Sundararajan (PW.2) was working as an officer in the respondent company and now he is not in service and at no point of time, he along with one Michael Raj made a talk with the drivers. Of course RW.2 and RW.3 are the employees in the respondent company and they might have deposed in favour of the respondent company. But at the same time, the evidence of PW.2 can be looked into. PW.2 in his cross-examination, has stated that he joined as Assistant in the respondent company during the year 1985 and then he was promoted to Administrative Officer, Special Officer, Senior Special Officer and Assistant Manager and then on 31-3-2010 he was forced to resign from the job and he did not come forward to give the resignation letter voluntarily and the management did not pay the amount (நல்லெண்ணத் தொகை) as promised by them and he sent the e-mail letter under Ex.R13 to the respondent company, requesting for financial help and one Murali, who was the Assistant Manager has sent a reply under Ex.R14.

16. This part of evidence of PW.2 would clearly show that due to misunderstanding between PW.2 and the respondent company, he was relieved from service by the respondent company. Under these circumstances, there is every possibility for PW.2 to depose falsehood as against the respondent company. Apart from the above, the petitioner has stated that the respondent was not prepared to pay the *lump sum* amount as originally offered by the respondent. Admittedly, the petitioner was paid a sum of ₹ 69,971 towards full and final settlement on 8-6-2005 under Ex.R3. But the petitioner has raised a dispute only on 23-11-2006 after 1½ years from the date of receipt of the said amount. If there is any variation in getting the terminal benefits, it is for the petitioner to approach before the respondent company immediately on receipt of the said amount. But there is no document produced on the side of the petitioner to show that he approached the respondent company for not granting the terminal benefits, as promised by the respondent company. Further there is no plausible explanation on the side of the petitioner for delay in raising the present dispute. In the above circumstances, the case of the petitioner that it was a fraud resignation cannot be believed.

17. It is pertinent to refer the following decisions, which are relevant to this case:-

2003(1) L.L.N. 84 :

Laffans India (P) Limited Versus Pancham Singh Rawat and another:-"Industrial Disputes Act, 1947 section 10(1)(c) - Complaint of forced resignation - Tenability - Labour Court awarded compensation *in lieu of* reinstatement on ground that employer had resorted to short-cut of taking resignation and thus avoided payment of retrenchment compensation - Dispute raised after a period of 15 months - Held delay of 15 months was a crucial factor to discard totally the theory that the workman was forced to resign as no workman who was forced to resign would keep quiet for such a long period - Held, award of Labour Court was perverse and totally baseless".

2005(2) L.L.N. 360:

K. Haridas L. Shenoy and Johnson and Johnson Limited and others :-

"Resignation - Case of workman is that it was obtained under coercion - If could be believed - Held, workman not making immediate protest that his resignation was obtained by force -Protest made after 20 days from date of resignation - Concurrent finding of fact that there was no coercion - No interference with the concurrence findings of courts below."

18. The petitioner has further stated that since he refused to give the resignation letter, as demanded by the respondent management, the respondent management planned to punish the petitioner by transferring him to distant places like Chennai.

19. PW.1 in his cross-examination has admitted that the transfer of employees in the respondent company is routine one and the respondent company has

informed anything about his transfer to other place and from 1994 onwards he was working in the same place. The relevant portion of his evidence runs as follows:-

"பணி இடமாற்றம் என்பது எங்கள் பணியில் ஒரு சாதாரண நிகழ்வுதான் என்றால் சரிதான். பணி இடமாற்றம் செய்யப் போவதாக நிர்வாகம் எதுவும் சொல்லவில்லை. 1994-ல் இருந்து பணியில் சேர்ந்தது முதல் ஒரே பகுதியில்தான் பணி புரிந்தேன்."

Though the petitioner has stated that the respondent company has planned to transfer him to distant place, during the cross-examination, he has stated that he was not informed anything about his transfer. Further transfer of employees from one place to another place is the discretion of the management and no one can interfere with this. Hence, the contention of the petitioner that by threatening him to transfer to distant place, the respondent management got his resignation letter, cannot be taken into consideration.

19. For the foregoing reasons, this court has come to the conclusion that the petitioner has tendered his resignation voluntarily and based on which, he was relieved from service and consequently the terminal benefits were given to him, which were accepted by him without any objection and hence the petitioner is not workman within the meaning of section 2(s) of Industrial Disputes Act and he is not entitled to get the reinstatement with back wages and other benefits. Accordingly, this point is answered.

20. In the result, the industrial dispute is dismissed. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 19th day of July 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

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List of witnesses examined for the petitioner :

PW.1 — 17-3-2011 — Sivakumar

PW.2 — 25-6-2012 — Sundararajan

List of witnesses examined for the respondent :

RW.1 — 19-9-2011 — Daniel Rajanayagam

RW.2 — 27-3-2012 — V.R. Raguraman

RW.3 — 10-4-2012 — Rajaram

List of exhibits marked for the petitioner :

Ex.P1 — Resignation letter, dated 8-6-2005 submitted by the petitioner to the respondent.

Ex.P2 — Letter, dated 8-6-2005 sent by the petitioner to the respondent regarding settlement of accounts.

Ex.P3 — Representation, dated 4-12-2006 submitted by the petitioner to the Labour Officer.

Ex.P4 — Reply, dated 25-12-2006 submitted by the respondent to Labour Officer.

Ex.P5 — Failure report, dated 25-4-2008.

Ex.P6 — Reply, dated 11-12-2006 submitted by the respondent to Labour Officer.

Ex.P7 — Representation, dated 10-6-2005 sent by Allwin Mariasusai to respondent.

Ex.P8 — Pamphlet showing inaugural function of Trade Union.

Ex.P9 — Pay slip of the petitioner for the month of February 2005.

Ex.P10 — Service Certificate issued by the respondent to the petitioner.

List of exhibits marked for the respondent :

Ex.R1 — Resignation letter submitted by the petitioner, dated 8-6-2005

Ex.R2 — Letter, dated 8-6-2005 issued by the respondent relieving the petitioner.

Ex.R3 — Receipt towards full and final settlement, dated 8-6-2005.

Ex.R4 — Application for gratuity submitted by the petitioner, dated 4-6-2005.

Ex.R5 — Letter, dated 4-12-2006 submitted to the Labour Officer by petitioner.

Ex.R6 — Remarks submitted by the respondent, dated 23-12-2006.

Ex.R7 — Conciliation failure report, dated 25-4-2008.

Ex.R8 — Copy of the letter sent by the Member-Secretary to the respondent, dated 30-6-2006.

Ex.R9 — Copy of the letter sent by Member-Secretary to the respondent, dated 11-7-2006.

Ex.R10 — Copy of the Advocate notice sent to the petitioner, dated 18-7-2006.

Ex.R11 — Copy of the private complaint filed by the respondent against the petitioner, dated 13-9-2006.

Ex.R12 — Copy of the plaint in O.S. No.173/2006 on the file P.S.J., Pondicherry.

Ex.R13 — E-mail, dated 4-2-2011 sent by the petitioner

Ex.R14 — E-mail, dated 5-12-2009 sent by Murali to the petitioner.

Ex.R15 — E-mail, dated 10-2-2010 sent by Murali to the petitioner.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.